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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

CINDY C.,

Petitioner,

v.

THE SUPERIOR COURT OF THE
COUNTY OF SAN BERNARDINO,

Respondent;

SAN BERNARDINO COUNTY
DEPARTMENT OF CHILDREN'S
SERVICES,

Real Party in Interest.

E036979

(Super.Ct.Nos. J-189951,
J-189952 and J-189953)

OPINION

ORIGINAL PROCEEDINGS; petition for extraordinary writ. A. Rex Victor,
Judge. Petition denied.

Gloria Gebbie for Petitioner.

No appearance for Respondent.

Ronald D. Reitz, County Counsel, and Jacqueline Carey-Wilson, Deputy County
Counsel for Real Party in Interest.

Petitioner Cindy C., the mother of Cynthia M., D. P., J. P., and N. P.,¹ filed this writ petition challenging an order setting a Welfare and Institutions Code section 366.26² permanency planning hearing. She contends that she was not provided with reasonable reunification services and that reunification services should have been extended for an additional six months. As discussed below, we deny her petition.

FACTUAL AND PROCEDURAL BACKGROUND

On July 29, 2003, the San Bernardino County Department of Children's Services (DCS) filed section 300 petitions on behalf of the children. The petitions alleged that mother and father abused and failed to protect the children (§ 300, subds. (b) & (j)) by failing to obtain follow-up medical treatment for N. P.'s congenital heart condition and by engaging in domestic violence. The petitions also alleged that father suffered from a substance abuse problem which impaired his ability to parent.

On August 4, 2003, the juvenile court adopted the social worker's findings, removed the children from parents' custody, and ordered DCS to provide reunification services to the family. The parents were provided weekly supervised visitation and the social worker was authorized to liberalize visitation if appropriate.

¹ Cynthia M. was born in October 1993; D. P. was born in April 2001; J. P. was born in June 2002, and N. P. was born in June 2003. Cynthia M. is not a party to this proceeding as the court placed her in the custody of her father, Thomas M., and terminated jurisdiction over her. Edward P., the father of D. P., J. P. and N. P. is not a party to this petition.

²All further statutory references are to the Welfare and Institutions Code unless otherwise stated.

On August 22, 2003, DCS filed amended section 300 petitions on behalf of the children to add the allegation that mother suffered from a substance abuse problem which impeded her ability to parent the minor children. Parents denied the allegations and the matter was calendared for a contested jurisdiction/disposition hearing.

At the contested jurisdiction/disposition hearing held on September 19, 2003, the court found father suffered from a substance abuse problem which impaired his ability to parent, mother was observed with a black eye and the “parents . . . struggle with domestic violence.” The court made no finding on the remaining allegations. The court advised parents that court-ordered reunification services may be limited to six months because the children were under the age of three years at the time of removal. The court also advised parents that failure to participate and make substantial progress in the treatment program was prima facie evidence that return of the children would be detrimental. The court declared D. P., J. P. and N. P. were dependents of the court and ordered parents to participate in their service plans. The court placed Cynthia M. with her father and terminated jurisdiction over her.

The social worker’s status review report dated March 19, 2004, reported the social worker met with parents in their apartment on October 15, 2003. Parents objected when they were given the paperwork to take random drug tests within 24 hours. Father failed to test, but mother’s two random drug tests were negative. Parents informed the social worker they were taking the Parenting and Anger Management classes at the San Bernardino YWCA. They insisted their children should not have been taken from them

because they had done nothing to deserve their removal. On November 26, 2003, mother informed the social worker father had choked her and hit her head. She said she had told him she could not live with him any longer because she was trying to get her children back. She called the police, filed charges and he was arrested. She intended to get a restraining order and to move so he would not know where she lived. But she also admitted she still loved him and began advocating for him to visit with the children. By December 16, 2003, father no longer was participating in his case plan, but he and mother were on extremely friendly terms. On January 26, 2004, mother called and requested a referral for general counseling. The worker gave her a referral and mother made an intake appointment. After the social worker arrived at mother's apartment on February 18, 2004, mother and father walked up. Father removed keys from his pocket, handed them to mother and left the area. Mother unlocked the apartment door, apologized for the bucket of water and mop in the middle of the living room and explained the downstairs toilet was leaking. Mother also said she had completed her parenting class, expected to complete the anger management class in two weeks and had learned to control her anger. She would inhale, exhale and pray. She would rather talk to the children because "[w]hen you yell, it makes them mad." She saw no problems regarding caring for medically fragile infant N. P. and two very young needy children. She said she could "cope." She said she had five children and "raised them all." When the social worker inquired about the fifth child, mother said she was "about to get custody of him again." When the social worker reminded mother that blood tests

established N. P. was not being medicated properly under her care, mother became excited. She did not know how to give N. P. the right doses of the nine medications, “That’s too much stress” and the task of staying up all night to “make sure she didn’t turn blue” would be impossible for anyone. Mother acknowledged that N. P. does not know her.

The social worker reported D. P. and J. P. appeared to be in excellent physical health and N. P. had improved, but required special medical care. “As [N. P.’s] heart grows, the hole in her heart decreases in size.” However, she “continues to suffer from Gastroesophageal Reflux (GERD).” She “will only sleep for about 15 minutes at a time” so the foster mother, foster dad and their adult daughter take shifts staying up with her. Foster mother has been trained to care for medically fragile children and closely monitored N. P.’s health. N. P. is extremely well bonded to her foster parents. The foster parents would be willing to adopt N. P. should parents fail to reunify.

D. P. and J. P. were placed together in a separate foster family home, but the plan is to place the three children together with N. P.’s foster family. D. P. and J. P. were experiencing some emotional and physical delays. Foster mother reported D. P. “would freeze up and act traumatized. . . . He will stand with his mouth open to the point of drooling, not moving or making a sound, with his eyes fixed.” When mother was questioned about his behavior, she said, “he’s always done that.” His speech appears seriously delayed and he “says very few words.” “[F]oster parents have to watch [D. P.] when he eats because he now will eat so much that he throws up.” He and J. P. “were

both very afraid to take baths” and “were very afraid to have anything over their face, but water was especially frightening to them.” J. P. would cry when foster mother left the room and became hysterical if she left while another adult was present. D. P. and J. P. were receiving weekly therapy.

The social worker was “impressed with the tenacious ability of the mother to work toward completing her service plan.” Mother had completed the parenting class and should complete the anger management class within a couple of weeks. She had started general counseling through Caritas, but her therapist said she “was greatly lacking in insight.” Mother told the social worker she receives checks because “she can’t read, she can’t write, and she has asthma.” Mother consistently arrived for her visits on time and remained until the children left. She attempted to spend time with all of her children. But she appears “completely unaware of the danger associated with small children running in a parking lot” because she will call them to come to her with her arms outstretched when the foster mother’s car arrives at McDonald’s. Although N. P. is much too young to be given cheese and has digestive and heart problems, mother covertly put cheese in the infant’s mouth. Mother has no family support other than father, but the social worker believed she was “so motivated to have the children returned to her, it may be that this mother is a good candidate to relearn parenting skills.” The social worker planned to “begin placing the children back with the mother one at a time, beginning with the oldest child, [D. P.]” to give mother time to adjust and practice her new skills. Mother would be encouraged to bring problems and concerns to the therapist and social

worker. “[N. P.] would be the last child placed with the mother as her medical condition and inability to sleep during the day or night, would seriously compromise this mother’s ability to parent her children.” The social worker recommended extending time for six more months and returning the children or placing them for adoption on September 19, 2004.

At the review hearing, the juvenile court found mother’s progress had been minimal, but it adopted the social worker’s recommendation and extended mother’s reunification services for another six months. The court authorized the social worker to extend the frequency and time frame of mother’s visits as she progressed through the program. The court found clear and convincing evidence that father failed to participate in his court-ordered service plan and terminated his reunification services. The court informed mother that a section 366.26 hearing to terminate parental rights would be scheduled if the children could not be returned home by the next review hearing.

At the section 366.21 hearing held on November 4, 2004, Kim Troung, clinical therapist with Caritas Counseling, testified she began seeing mother on April 23, 2004. They worked on mother’s parenting, problem-solving, and anger-management skills and her ability to protect her children. When mother started therapy, she demonstrated difficulties reading and writing and mother indicated “she was delayed in all academic areas.” The therapist referred mother to Inland Regional Center (IRC) for help with her developmental delays. The therapist helped her complete the forms and addressed the envelope to IRC; all mother had to do was put a stamp on the envelope and mail it. It

was the therapist's opinion that mother would have benefited from services provided by IRC, such as housing assistance, transportation, "and even behavior modification in home type of respite care." Mother attended all of her scheduled appointments with the therapist and completed her treatment in September of 2004. Mother was receptive; she never rejected instructions or complained they were too difficult. She listened and indicated she would attempt to use the skills when her children were returned. The therapist never had an opportunity to see mother with her children. The psychologist's report to the therapist indicated mother "has difficulty with her cognitive ability that she's very delayed in that area." It is very difficult for her to understand abstract ideas. The therapist saw mother had difficulties in following concrete problems and did not know how she acted when she left the sessions. Although the normal therapy program consists of 12 sessions, the therapist requested additional sessions for mother. After 22 sessions, the therapist recommended terminating the sessions because mother had learned everything she could in therapy and "that was the maximum in terms of her capability of learning." The therapist did not have a recommendation whether mother could properly apply the skills she was developing in the therapy sessions. While mother did well in one-on-one situations, the therapist had never seen her with her children and was concerned about her capability to apply the skills to real life situations. The therapist was unsure whether mother would take a sick child to a doctor if she was under stress. The therapist also was concerned because mother did not have a support system. Mother tends to shut down when she gets distraught or upset. The therapist possibly could give

an opinion regarding mother's ability to apply the skills she had learned if they held family therapy sessions.

The social worker testified she recommended termination of services and a section 366.26 hearing so the children could be permanently placed. While mother had completed her recommended services, she had not benefited. That conclusion was based on mother's responses to the social worker's questions, the social worker's observations of mother with her children, and the reports. Although mother "thinks she's doing something good for her kids [and e]verything she does . . . is out of love . . . it's often not safe." The social worker "really wanted to do more for her," so a psychological evaluation was scheduled for feedback. The psychologist reported "that mother lacked the ability to go beyond concrete thought. That she was concerned based on the test results, that mother could not extrapolate from information that she saw, that she was non-protective because she really couldn't see danger. She tended to over exaggerate her abilities, given certain circumstances and to really minimize and trivialize danger[ous] situations." After talking to the psychologist, the social worker "learned that this isn't something that can be corrected or changed. This is just the way the mom receives and processes information. And given the youth of the children, how young they are, and the needs of the children, this is really beyond mom's capabilities." The social worker recommended termination because she was "very concerned the children would not be safe." The social worker concurred with the recommendation for IRC and mother advised an appointment had been made. Mother has no relatives and no friends. Mother

said “she would be alone with her children, which is what she wants.” Although mother does not know how to drive, she said she would get a car and learn to drive. At the time of the hearing, mother was living in an apartment with father’s sister. That was problematic because father “admits that he continues to use marijuana, he refused to participate in his case plan altogether and he has been violent with [mother.]” Mother said she was planning to move to a trailer in Hesperia which “had been completely trashed. But that’s okay. It was going to get fixed up.” While mother told the social worker that she and father were not living together, IRC reported they were both living with his sister. N. P. has been with the same caretaker since she was “about a month” old and the three children were together. They were progressing very well. Mother was “very good” about attending all of her visits. But, during one of her visits, she called out to the children from across the parking lot. Once when D. P. started crying, mother asked what was wrong, but after a very short period of time, she could not tolerate the crying. She is quick to anger. Mother paid more attention to the two older children and had very little to do with N. P. During a one-hour visit, mother left the children to accompany father outside for a cigarette break, although mother was not smoking. Mother does not understand that the children have limited abilities. She believes “the two older children really want to stay in their room and just play. And because they’re going to be in their room by themselves playing, she’s now going to be able to work with the baby. If she gets too tired because the baby keeps her up at night, she’s going to drink coffee. That’s her strategy.” She is unable to think in terms of the children’s needs. Based on the

psychologist's report and the social worker's discussion with the psychologist, it was her opinion that mother would not benefit from additional services. All three children "were all under the age of three [when they were removed] and they have changed significantly . . . with their current care givers." N. P. is not considered medically fragile, but "she still has medical needs that are above and beyond what a child her age would have."

Mother testified she completed her reunification plan. She never missed a visit with her children. She did go out for a smoke break during one visit. While it was a mistake for her to call J. P. to come to her from across the parking lot, there was no traffic. She plays with her kids; she goes up the slide and gets stuck there. "They think it's funny." She wants her children and feels she deserves them because she completed her plan. Her aunt and uncle gave her a double-wide trailer that has three bedrooms. It is located in a park and her space rent is \$250 a month. It needs to be cleaned out because the people who were renting it trashed it. She tends to look at the happy side. She attended one appointment with IRC. She does not use the therapist's parenting suggestions because the children "are too young for [her] to communicate with them like that." She would discipline her son by taking his toy from him and putting him in a chair in the corner, but she did not discipline her children during any of her visits. She knew N. P. "did have a heart murmur which has healed. So all she has now is a difficult time sleeping and acid reflux, which [is] normal to [mother] because it runs in [her] family." Mother does not know what that is because the foster mother did not give her all the details, but she would give N. P. "the medication they are giving her for the problem."

She believed her children were removed because her mother had a grudge against father “because he’s Black and she’s prejudice[d].” “Because [they] fought a lot around [her] children. So that was mainly the reason why and plus [her] mom lies.” Mother was “responsible for, . . . the problems, . . . arguing, fighting supposedly the lies that [were] in the report that [the] kids were not going to the doctors, the doctor appointments.” She did not have a history of domestic violence because they “argued before and the cops came but it was never no issue where it’s been on police report written down or [her] kids being removed, none of that.” She did not call the police because he choked her in November of 2003, but she did intend to get a restraining order when the children were removed. She and father were not living together and she does not have a problem with domestic violence. She sees father on and off, but she lives with her sister-in-law who does not get along with father. Father is “basically homeless.” She is moving out because she needs her own place and does not want to be around any of her relatives since she and her mother do not get along. She moved all of her things to the mobilehome. She is disabled because she has asthma and “a learning disorder, reading.” She is unable to read and write except her name. She plans to go back to school and get a job. She had one appointment with IRC and expects to receive transportation benefits, which is all the help she needs. She does not see a possibility of risk to the children because she can care for them and father is no longer around. She believes there was no reason to remove her children.

The juvenile court terminated services and scheduled a section 366.26 hearing. The court found the children were under three years of age at the time of removal; clear and convincing evidence established custody by the parents would be detrimental to the children because parents failed to participate regularly and make substantive progress in the court-ordered plan; mother failed to recognize that she had issues that needed correcting so her progress toward alleviating/mitigating the cause necessitating placement had been minimal in the qualitative sense; and DCS made reasonable efforts to return the children, but there was no probability they could be returned safely during the statutory time frame.

DISCUSSION

Mother contends the juvenile court erred in terminating reunification services and setting a section 366.26 hearing. She argues that she was not provided with reasonable reunification services and that reunification services should have been extended for an additional six months. We disagree.

In reviewing the reasonableness of the reunification services, we recognize that in most cases more services might have been provided and the services provided are often imperfect. “The standard is not whether the services provided were the best that might have been provided, but whether they were reasonable under the circumstances.” (*Elijah R. v. Superior Court* (1998) 66 Cal.App.4th 965, 969.) A court-ordered reunification plan must be tailored to fit the circumstances of each family and designed to eliminate the

conditions that led to the juvenile court's jurisdictional finding. (*In re Dino E.* (1992) 6 Cal.App.4th 1768, 1777.)

The record in this case, set out above, reveals the services offered were reasonable -- they were tailored to fit the circumstances and to eliminate the conditions that led to the juvenile court's jurisdictional finding -- and mother consented to them. The children were removed from her custody because she failed to protect and properly care for them. She failed to provide N. P., a medically fragile infant, with appropriate medical care; mother and father engaged in domestic violence; and father abused drugs. The services afforded mother included parenting, anger-management and domestic-violence classes; referrals to general counseling, IRC, and 22 sessions of individual therapy; she was provided with a progressive visitation schedule and a gradual transfer of the children to her home as appropriate; and she was contacted by the social worker at least once a month. She attended the classes and received 22 sessions of individual therapy. She worked with the therapist to acquire problem-solving and anger-management skills and to understand the developmental ages of children as well as the parental responsibilities of discipline and protection. Unfortunately, she did not benefit from the extensive services and her cognitive deficits resulted in her demonstrating an inability to safely and competently parent her children. She denied there was any justification for removal of the children and refused to recognize that removal was necessitated by her inability to care for N. P. or to admit the domestic violence. She stated she did not use the techniques she learned from therapy because the children were too young, she remained

quick to anger and she gained no insight into the difficulties of caring for an infant who needed 24-hour care while also caring for two other very young needy children. Viewing the evidence in the light most favorable to upholding the juvenile court's order, we find the services provided were reasonably geared to overcoming the problems that caused the dependency and thus they were reasonable under the circumstances of this case. (See *In re Jasmon O.* (1994) 8 Cal.4th 398, 424-425; *In re Christina L.* (1992) 3 Cal.App.4th 404, 417.)

Furthermore, by consenting and failing to object to the reunification service plan ordered by the juvenile court and implemented by the social worker, mother waived her claims regarding any inadequacy in the services offered. (*In re Precious J.* (1996) 42 Cal.App.4th 1463, 1476; *In re Christina L., supra*, 3 Cal.App.4th at p. 416.)

In these circumstances, substantial evidence supports the juvenile court's finding that the reunification services offered to mother were reasonable and the court did not abuse its discretion.

Nor did the juvenile court abuse its discretion in terminating the services. Section 366.21, subdivision (e), requires the juvenile court to return a dependent child to parental custody at the six-month review hearing "unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent . . . would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child." Here, the evidence established that while mother visited regularly with the children, attended 12 months of reunification services and had reached the maximum in

terms of her learning capability, she did not discipline the children during her visits, she did not apply and/or intend to apply the discipline techniques she was developing during therapy, she did not tolerate crying by the children, she could not be left alone with them without close supervision, she had no support system, she believed she needed assistance only with transportation, she did not understand N. P.'s medical needs or appreciate the demands of caring for N. P. while also caring for two other very young children, and she continued to deny past domestic violence. Thus, mother has not made significant progress in resolving the problems that prompted removal of the children and she has not demonstrated a capacity and ability to provide for the children's safety, protection and well-being. Accordingly, there was not a substantial probability that the children could be returned to mother within six months if the court extended reunification. (§ 366.21, subd. (g)(1).)

Finally, because all three children were under three years of age when they were removed from her care, she was only entitled to six months of services and had received twelve months but was unable to parent her children. (§ 361.5, subd. (a)(2).)

All of the foregoing factors, as well as the credibility of the witnesses, were thoughtfully considered by the juvenile court, which acted well within its discretion, on substantial evidence.

DISPOSITION

The petition is denied.

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HOLLENHORST

Acting P. J.

We concur:

WARD

J.

GAUT

J.